

REMARKS

The Office Action of September 26, 2006 has been reviewed and the comments therein were carefully considered. Claims 1-54 are pending in this application. By this response, claims 1, 15 and 41 have been amended. The amendments are supported by the specification and claims as originally filed and no new subject matter has been added.

Rejections under 35 U.S.C. § 103(a)

Claims 1-9, 15-35 and 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hansa et al. (6,472,004) in view of the admitted state of the prior art, and Aterno et al. (2,811,483). Claims 1, 15 and 41 have been amended to clarify several aspects of the oat composition. First, the oat composition is shelf-stable, which is supported at least by paragraphs [0031] – [0035] of the Example. Second, the oatmeal composition comprises a mixture of an oatmeal component and a vitamin C component, which is supported at least by paragraph [0029]. Last, the triple encapsulated vitamin C component comprises at least one coating of an oil/fat constituent and at least one coating of a polymer constituent, which is supported at least by paragraph [0025]. Accordingly, no new matter has been added.

Hansa et al. is directed to an oat product with nutrients, such as vitamin C, coated on the oats in a fat-free binder (Col. 4, lines 12-30, col. 9, lines 40-66). The Office Action contends that the coating inherently provides the encapsulation. However, even if the coating “inherently” encapsulates the vitamins, there is no teaching that the layers of encapsulation would provide distinct coatings – at least one having an oil/fat constituent and at least one having a polymer constituent. That is, there is no triple encapsulation. All of the coating ingredients are simply mixed together and coated onto oat flakes, for example.

Since Hansa does not teach or suggest triple encapsulation, Hansa clearly does not recognize the benefits of triple encapsulation. For example, vitamin C having a single oil coating would be susceptible to free radical attack, allowing the vitamin C to be attacked and degraded. Providing a coating of a polymer such as ethyl cellulose beneath an outer oil coating, or between two oil coatings, inhibits free radicals from getting past the outer oil coating. An oil coating between the polymer coating and the vitamin C will further prevent free radicals from reaching the vitamin C. This then allows a shelf-stable product to be produced.

Hansa does not teach or suggest the instant claims. Aterno does not remedy the defects of Hansa.

Aterno et al. is directed to beadlets of vitamins and nutrients with layers of sugar syrup and layers of plastic or resinous materials (Col. 2, lines 55-60 and 65-69). Aterno et al. teaches sprinkling the beadlets on “any food product which is not served in a heated condition or otherwise subjected to excessive heat after application of the beadlets.” (Col. 1, lines 50-52) In contrast to Aterno et al., Hansa et al. discloses that “the coated oat flakes are dried at a temperature in the range of from about 100°F to about 500°F and more typically 150-350°F.” (Col. 6, lines 54-56) Hence, one skilled in the art would not have modified Hansa in view of Aterno since Hansa would not have included an ingredient that could not be heated.

Moreover, even if one skilled in the art combined Aterno et al. and Hansa et al., the combination of the beadlets of Aterno et al. with the coated oat product of Hansa et al. would result in beadlets coated onto oats with a binder, not in a shelf-stable oat composition comprising a mixture of an oat component and a vitamin C component as recited in amended independent claims 1, 15 and 41.

Similar to the combination of Aterno et al. with Hansa et al., it would not have been obvious to combine triple encapsulated vitamin C with Hansa et al. The commercial availability of a material does not render its every use obvious. Even if one skilled in the art combined TEVC with Hansa et al., the result would be TEVC coated onto oats with a binder, not the shelf-stable oat composition mixture as claimed. In addition to only disclosing a coating on the oat product, Hansa et al. teaches against an oat composition mixture, stating: “The resulting product is thus ideally suited for bulk packaging since the coating material will not separate into a separate phase or settle to the bottom of a container.” (Col. 7, lines 1-4) Consequently, none of Hansa et al., Aterno et al. or the commercial availability of TEVC, either alone or in combination, teach or suggest all of the features of amended claims 1, 15 or 41. Claims 2-9, 16-35 and 42-44 depend from claims 1, 15 and 41, respectively, and are patentable over Hansa et al. in view of the state of the admitted prior art and Aterno et al. for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein.

Claims 10-14, 36-40 and 50-54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of

JP55045601 and Anderson (2,410,417). JP55045601 discloses that it was known to coat a drug with hardened oil and then ethyl cellulose. Similarly, Anderson discloses that it is known to incorporate vitamins A and E into hard fat before coating with ethyl cellulose. (Col. 7, lines 5-10, Col. 8, lines 1-40) Neither JP55045601 nor Anderson, either alone or in combination, disclose a shelf-stable oat composition mixture or remedy the deficiencies of Hansa et al. or Aterno et al. with respect to amended claims 1, 15 or 41. Claims 10-14, 36-40 and 50-54 depend from claims 1, 15 and 41, respectively, and are patentable over Hansa et al. in view of the state of the admitted prior art and Aterno et al. and further in view of JP55045601 and Anderson for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections are respectfully requested.

CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. The Examiner is welcome to contact via telephone the undersigned should it be helpful to facilitate prosecution of the application.

Should there be any other fees due, the Commissioner is hereby authorized to charge any such fees or credit any overpayment of fees to Deposit Account No. 19-0733.

Respectfully submitted,

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